

Endangered Species Act Biological Evaluation Form

Deepwater Horizon Oil Spill Restoration

Fish and Wildlife Service & National Marine Fisheries Service

This form will be used to provide information for the initiation of informal Section 7 consultations under the Endangered Species Act, if required, or to document a No Effect determination. In addition, information provided in this form may be used to inform other regulatory compliance processes such as Essential Fish Habitat (EFH), Marine Mammal Protection Act (MMPA), Section 106 of the National Historic Preservation Act (NHPA), Migratory Bird Treaty Act (MBTA), and Bald and Golden Eagle Protection Act (BGEPA). Further information may be required beyond what is captured in this form. Note: if you need additional space for writing, please attach pages as needed.

A. Project Identification

<i>Lead Agency</i>			
U.S. Fish and Wildlife Service/National Marine Fisheries Service		<i>Phone</i>	<i>Email</i>
<i>Agency Contact Person</i>		812-756-2712 and	Ashley_Mills@fws.gov and
Ashley Mills and Laurel Jennings		206-526-4601	Laurel.Jennings@noaa.gov
<i>I. Applicant Agency or Business Name</i>			
Florida Department of Environmental Protection			
<i>II. Applicant Contact Person</i>	<i>III. Phone</i>	<i>Email</i>	
Gareth Leonard	(850) 245-2222	Gareth.Leonard@dep.state.fl.us	
<i>IV. Project Name and ID# (Official name of project and ID number assigned by action agency)</i>			
Florida Coastal Access Project - Leonard Destin Heritage Park			
<i>V. Project Type #1</i>		<i>Project Type #2, if helpful</i>	
Land Acquisition and Management		General Construction/Building	
<i>VI. NMFS Office (Choose appropriate office based on project location)</i>			
NMFS Southeast Regional Office			
<i>VII. FWS Office (Choose appropriate office based on project location)</i>			
Panama City Ecological Services Field Office (Panama City)			

B. Project Location

<i>I. Physical Address of action area (If applicable)</i>
Calhoun Waterfront, 101 Calhoun Avenue, Destin, Florida.
<i>II. State & County/Parish of action area</i>
Okaloosa County
<i>III. Latitude & Longitude for action area (Decimal degrees and datum [e.g., 27.71622°N, 80.25174°W NAD83] [online conversion: https://www.fcc.gov/encyclopedia/degrees-minutes-seconds-to-from-decimal-degrees])</i>
30.398127°N 86.513329°W WGS84
<i>IV. Township, range and section of the action area</i>
Township 02S, Range 00, Section 22W

C. Description of Action Area

1. Attach a separate map delineating where the action will occur. 2. Describe ALL areas that may be affected directly or indirectly by the action and not merely the immediate action area involved in the action, or just where species or critical habitat may be present. Provide a description of the existing environmental conditions and characteristics (e.g., topography, vegetation type, soil type, substrate type, water quality, water depth, tidal/riverine/estuarine, hydrology and drainage patterns, current flow and direction), and land uses (e.g., public, residential, commercial, industrial, agricultural). 3. If habitat for species is present in the action area, provide a general description of the current state of the habitat. 4. Identify any management or other activities already occurring in the area. 5. Provide or attach a detailed map of the area of potential effect for ground disturbing activities if the area is different from the action area.

1. This project site action area is identified in Attachment A, Figures 1, 2.

2. The proposed Leonard Destin Park is located within Okaloosa County at the former homestead of Captain Leonard Destin, the City of Destin's namesake. The proposed park would be named in his honor. Destin's original home was lost to fire and replaced with a similar house but the structure was razed in 2013 and no housing structures currently exist on the property. The property is approximately 3.42 acres and includes 280 linear feet of frontage on Choctawhatchee Bay, a heavily used waterway.

The property does not have any formal structures except for a dock which is used seasonally by a pontoon boat and Jet Ski rental operator. The commercial operation utilizes the existing dock as well as the western portion of the property for a gravel parking lot, boat storage, temporary storage units, picnic tables, and beach chairs. Patrons of the pontoon boat and Jet Ski rental operator use the property for parking, picnicking and lounging on the beach (Attachment A: Figures 3-9). The property also hosts part of a small great blue heron rookery that extends into adjacent properties. Approximately six nests currently exist in four trees on the north-western portion of the property. The current owners observe that birds continue to roost here each year despite the commercial activities and associated noise. The property has been used for many different purposes over the years including as the home of Leonard Destin, the original settler of the City of Destin, in the mid-19th century. Destin's original home was lost to fire and replaced with a similar house but the structure was razed in 2013 and no housing structures currently exist on the property. The vegetation at this parcel consists of maritime oak, with minimal understory possibly consisting of grasses. The site includes areas that are bare of vegetation including the beach area, and areas that are regularly mowed, along with areas that have worn away from vehicle and pedestrian traffic, specifically near the coastline (Attachment A: Figures 3-9). Little understory exists under most trees (see Attachment A: Figures 3-9). At the shoreline, little vegetation occurs; there are no wetlands on-site. There are seagrasses at this site in the vicinity of the dock (Attachment A: Figures 2).

This site is predominantly flat. There has previously been development onsite where soils have been disturbed. Soils in the area have been classified by USDA NRCS as predominantly Kureb sand and Newhan-Corolla complex soil types. These soil types are composed primarily of sand, are flat with slight slopes, excessively drained, and classified as having negligible to very low runoff. Choctawhatchee Bay substrate is characterized by fine-grain sand and organics. Currently, a private commercial pontoon and Jet Ski rental business operates on the property which utilizes the existing dock and parts of the property for parking and other uses that have also disturbed the substrate. The proposed Leonard Destin Park site is located at the mouth of Choctawhatchee Bay, on an artificial channel opening. The Choctawhatchee Bay watershed encompasses 5,350 square miles. Depths in Choctawhatchee Bay range from 3 to 13 meters. The Choctawhatchee River is the major source of freshwater to the Bay. Other major water features include Pea River, Wrights Creek, Sandy Creek, Pine Log Creek, Seven Runs, Holmes Creek, and Bruce Creek. The Bay is a stratified system with low tidal energy. This project site is located in FEMA designated Flood Zone AE with a base flood elevation of eight feet. Historically, the watershed has seen high amounts of agriculture, timber harvesting, and development. Development has contributed to water quality impacts from stormwater runoff, erosion, and sedimentation. Contaminants of concern include polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), lead, and mercury. Choctawhatchee—St. Andrew is listed as a 303d impaired waterbody for mercury in fish tissue, fecal coliform, and bacteria in shellfish and for beach advisory. Additional contributors to water quality degradation in this bay are agriculture and timber harvesting, influencing increased nutrients, algal blooms, and low dissolved oxygen conditions. In the watershed, Rocky Bayou State Park Aquatic Preserve and the eastern most part of the bay are designated as "Outstanding Florida Waters" worthy of special protection (Chapter 62-302.700, Florida Administrative Code). The proposed Leonard Destin Park site is privately owned and is proposed to be acquired by the Trust for Public Lands and then donated to the City of Destin. The site is zoned as "Calhoun Mixed Use District," which allows a variety of residential and commercial uses. This zoning includes single and multi-family housing, hotel/motels, and retail commercial goods and services. The nearshore bottomlands are considered state-owned and are held in public trust.

3. While the action area may provide habitat for listed species, no listed species are known to occur in the action area. Potentially affected species are described in Sections E-J.

4. This property is in private ownership, and as part of this action is proposed to be acquired by the Florida Trustees in partnership with the Trust for Public Lands, then donated to the City of Destin, FL. The site is currently zoned "Calhoun Mixed Use District" and, at present, a private commercial pontoon and Jet Ski rental business operates on the property. The commercial operation utilizes the existing dock as well as the western portion of the property for a gravel parking lot, boat storage, temporary storage units, picnic tables, and beach chairs. Patrons of the pontoon boat and Jet Ski rental operator use the property for parking, picnicking and lounging on the beach (see Attachment A, Figures 3, 5, 7, and 8).

5. The area of potential effect is not expected to fall outside of the immediate site area. See Attachment A: Figures 1, 10.

a. *Waterbody*
(If applicable. Name the body of water, including wetlands (freshwater or estuarine), on which the project is located. If the location is in a river or estuary, please approximate the navigable distance from the project location to the marine environment.)

The proposed Leonard Destin Park site is located within Okaloosa County on the Florida Panhandle on a peninsula separating the Gulf of Mexico from Choctawhatchee Bay (marine/estuarine environment). The property includes 280 linear feet of frontage on Choctawhatchee Bay.

b. *Existing Structures*
(If applicable. Describe the current and historical structures found in the action area (e.g., buildings, parking lots, docks, seawalls, groynes, jetties, marina.)). If known, please provide the years of construction.

Currently there is an informal parking lot under a few trees where a small heron rookery is located. There is a kiosk and a water well house, along with a bathroom facility. There is an existing pier on the property, developed in 1994, where a pontoon boat and jet ski rental business is currently operated. This site had the original home of Leonard Destin (mid 19th century), but it was lost to fire and replaced with a similar house, but the structure was razed in 2013 and no housing structures currently exist on the property.

c. *Seagrasses & Other Marine Vegetation*
(If applicable. Describe seagrasses found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the seagrasses in the action area.)

Seagrass, comprised of shoalgrass (*Halodule wrightii*), is present at the Leonard Destin Park project area and based on aerial imagery, there appears to be submerged aquatic vegetation in the vicinity of the existing dock (Attachment A: Figure 2).

d. *Mangroves*
(If applicable. Describe the mangroves found in action area. Indicate the species found (red, black, white), the species area of coverage in square footage and linear footage along project shoreline. Attach a separate map showing the location of the mangroves in the action area.)

Not applicable.

e. *Corals*
(If applicable. Describe the corals found in action area. If a benthic survey was done, provide the date it was completed and a copy of the report. Estimate the species area of coverage and density. Attach a separate map showing the location of the corals in the action area.)

Not applicable.

f. *Uplands*
(If applicable. Describe the current terrestrial habitat in which the project is located (e.g. pasture, forest, meadows, beach and dune habitats, etc.).

The uplands at this parcel consists of maritime oak with minimal understory consisting of grasses. The site includes areas that are bare of vegetation including the beach area, and areas that are regularly mowed, along with areas that have worn away from vehicle and pedestrian traffic, specifically near the coastline (Attachment A: Figures 3-9). Little understory exists under most trees (see Attachment A: Figures 3-9). At the shoreline, little vegetation occurs; there are no wetlands on-site.

D. Project Description

I. *Construction Schedule (What is the anticipated schedule for major phases of work? Include duration of in-water work.)*

Installation of the proposed site improvements is estimated to take 9-12 months. The specific schedule for construction has not been established, as the project is only at a conceptual design phase at this time (Attachment A: Figure 10).

II. *Describe the Proposed Action: 1. What is the purpose and need of the proposed action? 2. How do you plan to accomplish it? Describe in detail the construction equipment and methods** needed; permanent vs. temporary impacts; duration of temporary impacts; dust, erosion, and sedimentation controls; restoration areas; if the project is growth-inducing or facilitates growth; whether the project is part of a larger project or plan; and what permits will need to be obtained. 3. Attach a separate map showing project footprint, avoidance areas, construction accesses, staging/laydown areas. **If construction involves overwater structures, pilings and sheetpiles, boat slips, boat ramps, shoreline armoring, dredging, blasting, or artificial reefs, list the method here, but complete the next section(s) in detail.*

The Florida Coastal Access Project: Leonard Destin Park will be performed in two stages: (1) the acquisition of the coastal parcel and (2) the final design and construction of the park infrastructure and amenities. The second stage is described in Attachment B.

III. *Specific In-Water and/or Terrestrial Construction Methods (Provide a detailed account of construction methods. It is important to include step-by-step descriptions of how demolition or removal of structures is conducted and if any debris will be moved and how. Describe how construction will be implemented, what type and size of materials will be used and if machines will be used, manual labor, or both. Indicate if work will be done from upland, barge, or both.)*

a. *Overwater Structures (Place your answers to the following questions in the box below.)*

- Is the proposed use of this structure for a docking facility or an observation platform?*
- If no, is this a fishing pier? Public or Private? How many people are expected to fish per day? How do you plan to address hook and line captures?*
- Use of "Dock Construction Guidelines"? <http://sero.nmfs.noaa.gov/pr/Endangered%20species/Section%207/DockGuidelines.pdf>*
- Type of decking: Grated – 43% open space; Wooden planks or composite planks – proposed spacing?*
- Height above Mean High Water (MHW) elevation?*
- Directional orientation of main axis of dock?*
- Overwater area (sqft)?*
- Use of "Sea Turtle and Smalltooth Sawfish Construction Conditions, March 2006"? <http://sero.nmfs.noaa.gov/pr/Endangered%20species/Sea%20Turtle%20and%20Smalltooth%20Sawfish%20Construction%20Conditions%203-23-06.pdf>*

i. This project proposes to modify the existing dock by widening it. No new pilings will be required. This dock will not be used for motorized vessels. ii. Yes, this will be a public fishing pier (dock). Site visitation is expected to vary with fishing seasons. Parking at the site is limited to approximately 30 spaces. No fish cleaning stations are included in the plan. Any hook and line captures of listed species must be reported. iii. Yes, USACE and NMFS dock construction guidelines will be followed where possible regarding pier modifications on existing pilings. iv. Old planks will be removed and the replacement decking will be either wood or composite materials. v. Current dock height is unquantified, but appears to rest about one foot above the water (see Attachment A: Figures 3, 9). vi. Dock is oriented northwest from the site. vii. Dock area is expected to be approximately 3,550 sq ft. viii. Dock modifications will be in accordance with "Sea Turtle and Smalltooth Sawfish Construction Conditions, March 2006."

b. *Pilings & Sheetpiles (What type of material is the piling or sheetpiles? What size and how many will be used? Method used to install: impact hammer, vibratory hammer, jetting, etc.?)*

No new pilings will be installed. All dock/pier work will use the existing pilings. Modifications to the piers will include widening of the existing piers for ADA compliance. Materials will be made from natural (i.e., wood) or composite materials. Updated SAV surveys would occur prior to construction because SAV bed continuity, extent, and density are subject to change over time. An analysis of SAV, likely via aerial imagery analysis and field surveys, would be conducted prior to finalization of engineering and design plans. USACE and NMFS dock construction guidelines would be followed where possible regarding dock improvements. If the SAV survey finds that the SAV near the proposed dock location would be adversely affected by the widening of the dock, there is the potential to modify this improvement (e.g., incorporating the use of composite grated materials that would allow light through) to avoid or minimize adverse effects.

c. *Boat Slips (Describe the number and size of slips and if the number of new slips changes from what is currently available at the project. Indicate how many are wet slips and how many are dry slips. Estimate the shadow effect of the boats - the area (sqft) beneath the boats that will be shaded.)*

Not applicable.

d. *Boat Ramp (Describe the number and size of boat ramps, the number of vessels that can be moored at the site (e.g., staging area) and if this is a public or private ramp. Indicate the boat trailer parking lot capacity, and if this number changes from what is currently available at the project.)*

Not applicable. There is a kayak launch proposed for the expanded deck, but there is no boat trailer parking, only the proposed parking area for 30 vehicles. Kayaks will be carried onto the deck and launched from the shore. It is unknown if there will be mooring spots on the dock for non-motorized, small watercraft; this will depend on the final design plan. This is a public kayak launch.

- e. *Shoreline Armoring (This includes all manner of shoreline armoring (e.g., riprap, seawalls, jetties, groins, breakwaters, etc.). Provide specific information on material and construction methodology used to install the shoreline armoring materials. Include linear footage and square footage. Attach a separate map showing the location of the shoreline armoring in the action area.)*

Not applicable.

- f. *Dredging or digging (Provide details about dredge type (hopper, cutterhead, clamshell, etc.), maximum depth of dredging, area (ft²) to be dredged, volume of material (yd³) to be produced, grain size of material, sediment testing for contamination, spoil disposition plans, and hydrodynamic description (average current speed/direction)). If digging in the terrestrial environment, please describe fully with details about possible water jetting, vibration methods to install pilings for dune walk-over structure, or other methods.*

No in-water dredging or digging will occur. Digging would occur in the terrestrial environment to auger holes for installation of support structures (where needed) for the boardwalk. Digging would also occur if engineering designs determine that a stormwater pond is necessary to control runoff from the gravel parking area, this is estimated to be 600 cubic yards of excavation. There are bathrooms and the splash pad proposed on-site which would need connections to municipal water and sewer; this is anticipated to be 450 linear feet of two inch trunk line. Additional ground disturbances and surficial digging would be associated with construction of a gravel parking lot for 30 spaces, picnic pavilions, splash pad, restrooms, fire hydrant installation, and installation of a small irrigation system and accompanying infrastructure. Concrete would be used for two ADA compliant parking spaces. Minor disturbances associated with tree plantings, playground, splashpad, ADA beach ramp and mat, and seine boat would occur. The extent of terrestrial digging would likely be less than two thirds (2.28 acres) of the total

- g. *Blasting (Projects that use blasting might not qualify as "minor projects," and a Biological Assessment (BA) may need to be prepared for the project. Arrange a technical consultation meeting with NMFS Protected Resources Division to determine if a BA is necessary. Please include explosive weights and blasting plan.)*

Not applicable.

- h. *Artificial Reefs (Provide a detailed account of the artificial reef site selection and reef establishment decisions (i.e., management and siting considerations, stakeholder considerations, environmental considerations), deployment schedule, materials used, deployment methods, as well as final depth profile and overhead clearance for vessel traffic. For additional information and detailed guidance on artificial reefs, please refer to the artificial reef program websites for the particular state the project will occur in.*

Not applicable.

E. Species & Critical Habitat

1. List all species, critical habitat, proposed species and proposed critical habitat that may be found in the action area.
2. Attach a separate map identifying species/critical habitat locations within the action area.

For information on species and critical habitat under FWS jurisdiction, visit <http://www.fws.gov/endangered/species/>. Under NMFS jurisdiction, visit: http://sero.nmfs.noaa.gov/protected_resources/section_7/threatened_endangered/Documents/gulf_of_mexico.pdf.

Identify if gulf sturgeon are in saltwater, estuarine, or in freshwater in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. gulf sturgeon CH - saltwater). Identify if sea turtles are in water or on land in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Loggerhead sea turtle CH - terrestrial).

SPECIES and/or CRITICAL HABITAT (CH)	LOCATION (for sea turtles and gulf sturgeon only)	STATUS	CH UNIT
Gulf sturgeon	Marine	Threatened	
Loggerhead sea turtle	Marine	Threatened	
Green sea turtle	Marine	Endangered	
Hawksbill sea turtle	Marine	Endangered	
Kemp's ridley sea turtle	Marine	Endangered	
Leatherback sea turtle	Marine	Endangered	
Gulf sturgeon critical habitat	Marine	Critical Habitat	CH Unit 12
West Indian manatee	Select One	Endangered	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	
	Select One	Select One	

F. Effects of the Proposed Project

- I. *Explain the potential beneficial and adverse effects to each species listed above (Describe what, when, and how the species will be impacted and the likely response to the impact. Be sure to include direct, indirect, interdependent, interrelated, connected actions, and cumulative impacts. Where possible, quantify effects. If species are present (or potentially present) and will not be adversely affected describe your rationale. If species are unlikely to be present in the general area or action area, explain why. This justification provides documentation for your administrative record, avoids the need for additional correspondence regarding the species, and helps expedite review.)*

We anticipate that the acquisition of this parcel will be wholly beneficial. There may be beneficial and adverse effects to listed species from the recreational improvements, as described below.

Sea turtles. There is no piling installation proposed for this site, only enhancements (i.e., widening) to the two existing piers. The project location does not intersect with any identified sea turtle critical habitat in water or on land. However, the range of sea turtles suggests they could occur in the project area although the lack of suitable nesting habitat as well as the turtles' ability to avoid the general activity in the area may make them less likely to be affected by construction activities. As a result of construction related activities from dock construction and anticipated recreational uses of docks, this project may have direct or indirect adverse effects on sea turtles. However, the lack of suitable nesting and breeding habitat near the shoreline suggests that impacts are unlikely. Adverse effects from construction will be avoided or minimized by using conservation measures and BMPs in Section G.

Gulf sturgeon. The Gulf sturgeon inhabits coastal waters and freshwater river systems of the northern Gulf of Mexico. Gulf sturgeon are usually located in areas 2-4 meters deep with sand substrate. There is critical habitat for Gulf sturgeon at this site, and there is the potential for Gulf sturgeon to be in the waters during the time of construction. Potential impacts to the Gulf sturgeon include elevated noise levels and the presence of suspended sediments in the water column. This species is mobile and would likely exit the area during construction. As a result of construction activities conducted on the docks and anticipated recreational uses after completion, this proposed project may have direct or indirect adverse effects on Gulf sturgeon. Adverse effects from construction will be avoided or minimized by using conservation measures and BMPs in Section G.

West Indian manatee. The West Indian manatee inhabits freshwater, brackish, and marine environments. It typically occurs in coastal and inland tidal rivers and streams, mangrove swamps, salt marshes, freshwater springs, canals, lagoons, and vegetated bottoms. It moves to warm-water sites, including industrial warm-water discharges, during the winter. The project location does not intersect with any identified critical habitat for the West Indian manatee. Marine mammals are affected by vibrations resulting from construction activities (e.g., generators, pile drivers, etc.). There is no piling installation (e.g., driving or pushing pilings) proposed at this site, however, dock modifications such as widening are considered in-water work. Accordingly, as a result of construction related activities conducted on the dock, this project may have direct and/or indirect short-term adverse effects on the West Indian manatee and other marine mammals. If manatees are present, they would probably avoid the construction area. Appropriate conservation measures and BMPs in Section G will be undertaken to minimize and avoid adverse impacts associated with construction activities.

- II. *Explain the potential beneficial and adverse effects to critical habitat listed above (Describe what, when, and how the critical habitat will be impacted and the likely response to the impact. Be sure to include direct, indirect, interdependent, interrelated, connected actions, and cumulative impacts. Where possible, quantify effects (e.g. acres of habitat, miles of habitat). Describe your rationale if designated or proposed critical habitats are present and will not be adversely affected.*

The site contains no critical habitat for any of the species except Gulf Sturgeon (critical habitat unit 12; Attachment A: Figure 11). Gulf sturgeon critical habitat unit 12 is located directly adjacent to the site, and continues throughout Choctawhatchee Bay with Gulf sturgeon critical habitat unit 11 directly to the south in the Gulf of Mexico. In-water work proposed for this site only consists of enhancements (i.e., widening) to the existing pier; there is no proposed piling installation. Impacts to critical habitat would be indirect and adverse from actions such as increased suspended sediment and noise. If construction barges, tugs and other watercraft are used in dock-widening efforts, these would most likely be staged in the site area, thus in Gulf sturgeon critical habitat. However, disturbances would be temporary and it is not anticipated that the proposed project would permanently alter any of the habitat.

G. Actions to Reduce Adverse Effects

<p>I.</p>	<p><i>Explain the actions to reduce adverse effects to each species listed above (For each species for which impacts were identified, describe any conservation measures (e.g. BMPs) that will be implemented to avoid or minimize the impacts. Conservation measures are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation measures are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinstate this consultation.)</i></p> <p>Gulf sturgeon. Impacts to the Gulf sturgeon will be avoided and minimized by implementation of BMPs during ground disturbance activities that will reduce sediment and nutrient inputs to streams, minimize disturbance to riparian zone vegetation within 100 feet of the streambank in occupied habitat and revegetate disturbed areas with native vegetation. All work will take place in less than 1.5 meters of water and in areas of silty sand with seagrass. These species are known to avoid areas of high human activity when given the opportunity. Work will most likely take place during the spring and summer months when Gulf Sturgeon are less likely to be present in inshore shallow waters. If construction activity occurs when Gulf sturgeon are present, additional adverse impact reduction strategies could include the following:</p> <ul style="list-style-type: none"> • During project implementation, maintain riparian buffers of at least 100 feet around critical habitat. Install silt fencing to prevent sedimentation or erosion into streams and rivers; • Control turbidity levels through the use of floating turbidity screens during in-water construction. • Implement the Sea Turtle and Smalltooth Construction Conditions, Revised: March 23, 2006 and Measures for Reducing Entrapment Risk to Protected Species, Revised: May 22, 2012 as they are protective of Gulf sturgeon as well. <p>Sea turtles and manatees. During construction activities to widen the dock, BMPs identified within the Sea Turtle and Smalltooth Sawfish Construction Conditions and the Standard Manatee Conditions for In-Water Work (USFWS 2011) will be implemented to reduce the risk of adverse impacts to an insignificant or discountable level, if relevant. As noted in these documents, these conditions require stopping operation of any equipment if sea turtles or smalltooth sawfish come within 50 feet of the equipment until the animals leave the project area of their own volition. Pending negotiations on final design, marine mammal and sea turtle conservation measures could include posting of educational signage detailing what to do if sea turtles or marine mammals are spotted in the vicinity, or what to do in the event that there is an incidental hooking. There is the possibility to enlist these docks in Florida's Responsible Pier Initiative Program (a program through the Loggerhead Marinelife Center that adds signage to fishing piers, hosts first responder trainings, and conducts underwater clean-ups around piers). Additional conservation measures for sea turtles could include the use of wildlife friendly lighting if lights are required for docks. Lighting could be required for boater safety. The lighting would be wildlife friendly, consisting of solar LED lights.</p> <p>The following conservation measures will be followed to avoid and/or minimize adverse indirect impacts to listed aquatic and terrestrial species that may reside in and around the project area, including the Gulf sturgeon, West Indian manatee, sea turtles, and birds.</p> <ul style="list-style-type: none"> • Specific provisions will be identified in construction contract(s) to prevent storm water pollution during construction activities, in accordance with the National Pollutant Discharge Elimination System permit program of the Clean Water Act and all other federal regulations, and in accordance with the storm water pollution prevention plan to be prepared for this project. • Buffers between areas of soil disturbance and wetlands or waterways will be planned and maintained.
<p>II.</p>	<p><i>Explain the actions to reduce adverse effects to critical habitat listed above (For critical habitat for which impacts were identified, describe any conservation measures (e.g. BMPs) that will be implemented to avoid or minimize the impacts. Conservation measures are designed to avoid or minimize effects to listed species and critical habitats or further the recovery of the species under review. Conservation measures are considered part of the proposed action and their implementation is required. Any changes to, modifications of, or failure to implement these conservation measures may result in a need to reinstate this consultation.)</i></p> <p>Any construction work requiring equipment use from vessels will be conducted in accordance with the BMPs in the Standard Manatee Conditions for In-Water Work and Sea Turtle and Smalltooth Sawfish Construction Conditions to help to avoid impacts to critical habitat. This will minimize potential impacts to species and critical habitat in the area. Additionally, water quality measures (listed above for Gulf sturgeon and general conservation measures) will help minimize any impacts to critical habitat for Gulf sturgeon. These include during project implementation, maintaining riparian buffers of at least 100 feet around critical habitat, and installation of silt fencing to prevent sedimentation or erosion into water bodies.</p>

H. Effect Determination Requested

From the sections above, there should be enough detailed information to provide clear and obvious support for your determinations in the section below. If the rationale for the determination is not clear, additional information must be added to one of the sections. Identify if gulf sturgeon are in saltwater, estuarine, or in freshwater in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. gulf sturgeon CH - saltwater). Identify if sea turtles are in water or on land in your Species and/or Critical Habitat list to determine which federal agency will perform the analysis (e.g. Loggerhead sea turtle CH - terrestrial).

SPECIES and/or CRITICAL HABITAT	LOCATION (for sea turtles and gulf sturgeon only)	DETERMINATION (see definitions below)
Gulf sturgeon	Marine	May Affect, Not Likely to Adversely Affect
Gulf sturgeon critical habitat	Marine	No destruction or adverse modification
West Indian manatee	Select One	May Affect, Not Likely to Adversely Affect
Green sea turtle	Marine	May Affect, Not Likely to Adversely Affect
Hawksbill sea turtle	Marine	May Affect, Not Likely to Adversely Affect
Kemp's ridley sea turtle	Marine	May Affect, Not Likely to Adversely Affect
Loggerhead sea turtle	Marine	May Affect, Not Likely to Adversely Affect
Leatherback sea turtle	Marine	May Affect, Not Likely to Adversely Affect
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate
	Select One	Select Most Appropriate

NE = no effect. This determination is appropriate when the proposed action will not directly, indirectly, or cumulatively impact, either positively or negatively, any listed, proposed, candidate species or designated/proposed critical habitat.

NLAA = not likely to adversely affect. This determination is appropriate when the proposed action is not likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat or there may be beneficial effects to these resources. Response requested is "Concurrence." This conclusion is appropriate when effects to the species or critical habitat will be beneficial, discountable, or insignificant. Beneficial effects are contemporaneous positive effects without any adverse effects to the species or habitat. Insignificant effects relate to the size of the impact, while discountable effects are those that are extremely unlikely to occur. Based on best judgment, a person would not: (1) be able to meaningfully measure, detect, or evaluate insignificant effects; or (2) expect discountable effects to occur. If the Services concur in writing with the Action Agency's determination of "is not likely to adversely affect" listed species or critical habitat, the section 7 consultation process is completed.

LAA = likely to adversely affect. This determination is appropriate when the proposed action is likely to adversely impact any listed, proposed, candidate species or designated/proposed critical habitat. Response requested for listed species is "Formal Consultation". Response requested for proposed and candidate species is "Conference." This conclusion is reached if any adverse effect to listed species or critical habitat may occur as a direct or indirect result of the proposed action or its interrelated or interdependent actions, and the effect is not discountable or insignificant. In the event the overall effect of the proposed action is beneficial to the listed species or critical habitat, but may also cause some adverse effect on individuals of the listed species or segments of the critical habitat, then the determination should be "is likely to adversely affect." Such a determination requires formal section 7 consultation and will require additional information.

JP = likely to jeopardize proposed species/adversely modify proposed critical habitat. For proposed species and proposed critical habitats, the Service is required to evaluate whether the proposed action is likely to jeopardize the continued existence of the proposed species or adversely modify an area proposed for designation as critical habitat. If you reach this conclusion, a section 7 conference is required.

JC = likely to jeopardize candidate species. For candidate species, the Service is required to evaluate whether the proposed action is likely to jeopardize the continued existence of the candidate species. If this conclusion is reached, intra-Service section 7 conference is required.

Critical Habitat = No destruction or adverse modification. This determination is appropriate when the proposed action will have no direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

I. Bald Eagles

Are bald eagles present in the action area? ☒ NO ☐ YES

If YES, the following conservation measures should be implemented:

1. If bald eagle breeding or nesting behaviors are observed or a nest is discovered or known, all activities (e.g., walking, camping, clean-up, use of a UTV, ATV, or boat) should avoid the nest by a minimum of 660 feet. If the nest is protected by a vegetated buffer where there is *no* line of sight to the nest, then the minimum avoidance distance is 330 feet. This avoidance distance shall be maintained from the onset of breeding/courtship behaviors until any eggs have hatched and eaglets have fledged (approximately 6 months).
2. If a similar activity (e.g., driving on a roadway) is closer than 660 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
3. If a vegetated buffer is present and there is no line of sight to the nest and a similar activity is closer than 330 feet to a nest, then you may maintain a distance buffer as close to the nest as the existing tolerated activity.
4. In some instances, activities conducted at a distance greater than 660 feet of a nest may result in disturbance. If an activity appears to cause initial disturbance, the activity shall stop and all individuals and equipment will be moved away until the eagles are no longer displaying disturbance behaviors.

Will you implement the above measures? ☐ NO ☐ YES

If these measures cannot be implemented, then you must contact the Service's Migratory Bird Permit Office.

Texas – (505) 248-7882 or by email: permitsR2MB@fws.gov

Louisiana, Mississippi, Alabama, Florida – (404) 679-7070 or by email: permitsR4MB@fws.gov

J. Migratory Birds

Identify the species anticipated in the action area and behaviors (breeding, roosting, foraging) anticipated during project implementation. You may list similar species on a single line and categorize by type (e.g., Wading birds - great blue heron, snowy egret, reddish egret). If species or habitat impacts could occur, identify avoidance and minimization measures to prevent incidental take. Incidental take of Migratory Birds cannot be authorized. Use additional tables on the next page if needed.

I.

<u>Species/Species Group</u>	<u>Behavior</u>	<u>Species/Habitat Impacts and Conservation Measures to Minimize Impacts</u>
Wading birds (e.g., great blue heron)	Wading Birds- breeding, foraging, wintering, roosting	Wading birds primarily forage and feed at the water's edge in fresh, brackish and saltwater marshes and tidal flats. There is a confirmed Great Blue Heron rookery at this site with less than 10 nests. Noise and disturbance may cause birds to avoid the action area during construction. Birds would be expected to move to another nearby location to continue foraging, feeding and resting. However, activities at the site at present include parking beneath the rookery and operation of a boat rental business and this has not seemed to impact the rookery. These herons have continued to nest despite the current disturbances occurring there. The rookery trees will be protected and activity around the trees will be reduced with the proposed improvements. A wood boardwalk will be constructed through the heron rookery area, but will avoid the tree canopy. The boardwalk will guide park visitors to the peripheral edges of the rookery and native grasses will be planted underneath the trees on an area approximately 16,500 square feet. Educational signage will be installed at the site. Construction impacts to nesting herons will be avoided by conducting construction during the winter when the herons are not nesting. No significant adverse impacts to nesting and roosting are anticipated. Care would be taken to minimize noise and vibration near areas where foraging or resting birds are encountered. All disturbances would be localized and temporary. Roosting would not be affected because the project would occur during daylight hours only. No take of wading birds is anticipated.
Shorebirds (e.g., terns and plovers)	Shorebirds- breeding, foraging, wintering, roosting	Shorebirds could occasionally forage, feed, rest, and roost in the project area. As such, they may be impacted locally and temporarily by the project. It is expected that they may move to another nearby location to continue foraging, feeding and resting. These birds primarily nest and roost in the dunes and sand beaches. The action area does not include dune habitat, but there is beach habitat. There are no known shorebird nests on site. It is unlikely shorebirds would nest in the small beach area at this site, but if shorebird nests are found they would be avoided. The project would not affect roosting at this site because construction activities would occur during daylight hours only. No impacts to nesting and roosting shorebirds are anticipated. Care would be taken to minimize noise and vibration near areas where foraging or resting birds are encountered. All disturbances would be localized and temporary. No take of shorebirds is anticipated.

11.

<u>SPECIES/SPECIES GROUP</u>	<u>BEHAVIOR</u>	<u>SPECIES/HABITAT IMPACTS and CONSERVATION MEASURES TO MINIMIZE IMPACTS</u>
Raptors (e.g., hawks and kites)	Raptors- foraging, wintering, roosting	<p>Raptors could forage and rest in the action area. As such, they may be impacted locally and temporarily by the proposed project. It is expected that they would be able to move to another nearby location to continue foraging and resting. These birds primarily nest and roost in trees. There are no known raptor nests on site. The proposed project would not affect roosting at this site because construction activities would occur during daylight hours only. There is minimal to no tree removal expected from the site improvements. Prior to construction, nest surveys would be completed prior to any tree/shrub removal and any trees/shrubs with active nests would be flagged and avoided. No impacts to nesting and roosting are anticipated.</p> <p>Care will be taken to minimize noise and vibration near areas where foraging or resting birds were encountered. All disturbances would be localized and temporary. Therefore, no take of raptors is anticipated.</p>
Songbirds (e.g., sparrows and warblers)	<p>Songbirds- breeding, foraging, wintering, roosting</p> <p>General impact reduction methods for all birds.</p>	<p>Songbirds could forage, rest and nest in the project area. As such, they may be impacted locally and temporarily by the proposed project. Songbirds would be able to avoid the construction area and move to another nearby location to continue foraging and resting. Construction would occur only during daylight hours. If work must be done when songbirds are nesting, nest surveys will be completed prior to any tree/shrub removal and any trees/shrubs with active nests will be flagged and avoided. For these reasons, no take of songbirds or their nests is anticipated.</p> <p>To the extent possible, construction activities will avoid specific habitat locations onsite if there are known nesting birds and avoid nesting seasons. Pre-construction nesting surveys for migratory birds and raptors will be conducted and if evidence of nesting is found, the Trustees will coordinate with the USFWS to develop and implement appropriate conservation measures. At a minimum, trees/shrubs with active nests will be flagged and avoided. To avoid or minimize impacts to migratory birds from increased human activity, trails will divert and concentrate recreational users away from any important nesting, foraging, or rookery locations including shorelines where shoreline restoration will occur and minimal removal of trees. This project proposes minimal habitat fragmentation by improvements on existing areas of disturbance. Additionally, signage will be installed along trails, boardwalks, and picnic locations to provide users information on sensitive species in the area and actions to take to avoid or minimize impacts to sensitive species. Foraging and resting birds may temporarily be displaced during construction or recreation activities. Bird roosting will not be affected because construction activities and most human use will occur during daylight hours.</p>

Pre-existing NEPA Documents

Yes



No



Does this project have any pre-existing, site specific NEPA analysis? If YES, then provide final NEPA analysis, if not final then provide draft. If tiered from a programmatic EIS or EA, then provide the programmatic document or a link below.

Tiered from the Deepwater Horizon NRDA Early Restoration Phase III Early Restoration Plan/Programmatic Environmental Impact Statement.
<http://www.gulfsillrestoration.noaa.gov/restoration/early-restoration/phase-iii/>

NMFS ESA §7 Consultation

We request that all ESA §7 consultation requests/packages be submitted electronically to:

Laurel.Jennings@noaa.gov. Questions about consultation status may be directed to the same email address or by phone, 206-526-4601 or 206-794-4761 (cell).

FWS ESA § 7 Consultation

We request that all consultation requests/packages to FWS be submitted electronically to:

Ashley_Mills@fws.gov. You will be notified when we receive your Biological Evaluation. Upon receipt, we will conduct a preliminary review and provide any comments and feedback, including any requests for modifications or additional information. If modifications or additional information is necessary, we will work with you until the Biological Evaluation form is considered complete. Once complete, we will send your Biological Evaluation to the appropriate Field Office to conduct consultation. If you have questions about consultation status, please contact Ashley Mills by phone 812-756-2712 or email Ashley_Mills@fws.gov.

Name of Person Completing this Form:

Heather Ballestero, Industrial Economics, Inc.

Name of Project Lead:

Date Form Completed:

12/18/2015

Date Form Updated:

12/23/15

Biological Evaluation for Florida Coastal Access Project: Leonard Destin Park
Attachment A: Project Figures, Photos, and Conceptual Design



Figure 1: Leonard Destin Park Parcel Location

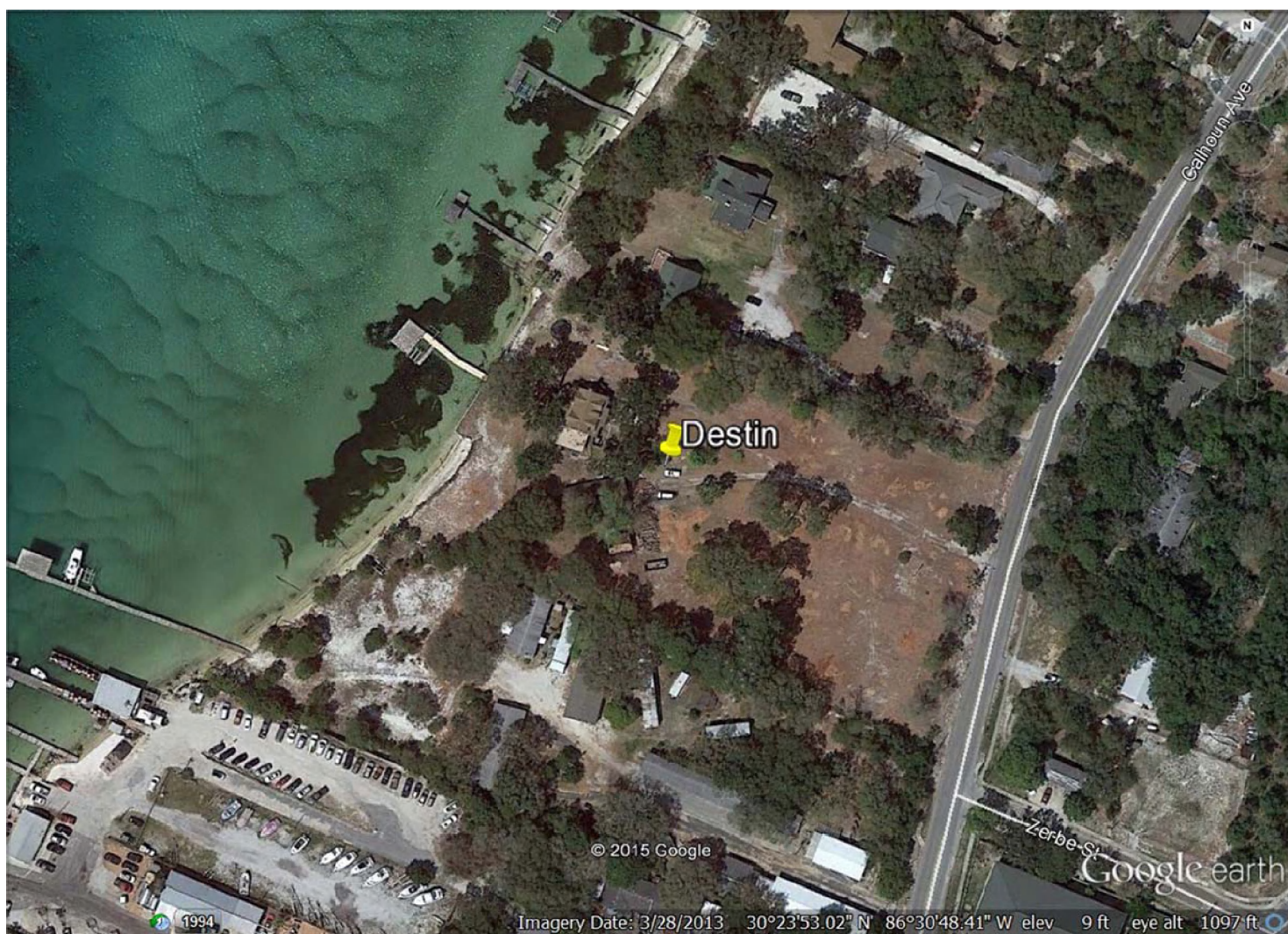


Figure 2: Proposed Leonard Destin Park- Location- 30°23'53.09"N 86°30'48.26"W



Figure 3: Leonard Destin Park- existing view looking towards great blue heron nesting trees, existing dock, and waterway



Figure 4: Leonard Destin Park- existing view looking north towards great blue heron nesting trees, existing dock, and waterway



Figure 5: Leonard Destin Park- existing view looking towards great blue heron nesting trees, taken from dock area, looking east. Note the presence of the cars under the trees.



Figure 6: Leonard Destin Park- view underneath the heron nesting trees



Figure 7: Leonard Destin Park- existing view looking towards beach area, Jet Ski rentals, and waterway



Figure 8: Leonard Destin Park- existing beach area with Jet Ski rentals, looking south



Figure 9: Leonard Destin Park- existing beach area and dock looking west towards waterway

Leonard Destin Park

Conceptual Master Plan

November 2015



Figure 10: Leonard Destin Park Proposed Conceptual Master Plan



Figure 11: Gulf Sturgeon Critical Habitat Unit 12 off of the Proposed Leonard Destin Park (ERMA 2015).

Biological Evaluation for Florida Coastal Access Project: Leonard Destin Park

Attachment B: Project Description.

The proposed Leonard Destin Park is located within Okaloosa County at the former homestead of Captain Leonard Destin, the City of Destin's namesake. The proposed park would be named in his honor. Destin's original home was lost to fire and replaced with a similar house but the structure was razed in 2013 and no housing structures currently exist on the property. The property is approximately 3.42 acres and includes 280 linear feet of frontage on Choctawhatchee Bay, a heavily used waterway (see Attachment A Figures 1 and 2 for general location). The site is currently zoned "Calhoun Mixed Use District" and, at present, a private commercial pontoon and Jet Ski rental business operates on the property. The commercial operation utilizes the existing dock as well as the western portion of the property for a gravel parking lot, boat storage, temporary storage units, picnic tables, and beach chairs. Patrons of the pontoon boat and Jet Ski rental operator use the property for parking, picnicking and lounging on the beach (see Attachment A Figures 3, 5, 7 and 8). The property also hosts part of a small great blue heron rookery that extends into adjacent properties. Approximately six nests currently exist in four trees on the north-western portion of the property. The current owners observe that birds continue to roost here each year despite the commercial activities and associated noise.

As part of this plan, the proposed site for the Leonard Destin Park would be re-zoned from "Calhoun Mixed Use District" to "Recreation." The proposed park would be a daytime use park (i.e., sunrise to sunset). The specific Leonard Destin Park site elements in the proposed conceptual site plan (Attachment A Figure 10) include:

1. **Expanded Dock for Accessibility.** The existing pier would be modified on the existing piling by expanding the width to make it ADA compliant. The existing dock has a platform deck at the end of it. The total area of the dock would be 3,550 square feet. The decking would be comprised of durable composite grated material and the other structural features would be comprised of natural (i.e., wood) material and/or durable composite materials.
2. **Expanded Beach Area.** The current beach area on the site is approximately 0.3 acres and is sparsely vegetated with primarily non-native grasses (see Attachment A Figures 4, 5, and 7). This beach area would be shaped and slightly expanded landward to less than 0.5 acres for total beach area. Shoreline stabilization efforts such as planting native grasses at the perimeter may be undertaken. Sand may also be imported to the site to supplement the beach area. All beach expansion efforts would take place landward of the mean high water line. An informational sign would also be placed at the beach area and could describe park rules, directions, a map, and/or provide site interpretation.
3. **ADA Beach Access with Mats.** An ADA beach ramp mat 50 feet long and 4 feet wide would provide ADA access to the beach.
4. **Raised Wooden Deck with Platform.** At the landward edge of the beach area, a wooden deck (approximately 2,700 square feet) would be constructed. Construction of this deck may require removal of several existing trees.
5. **Boardwalk.** A six-foot wide wooden boardwalk would be constructed adjacent to the raised wooden deck that would connect this deck to the shore (element number 8). This boardwalk would be approximately 100 feet long.
6. **Heron Rookery Protection Zone (Planted with Native Grasses).** The boardwalk around the heron rookery would guide park visitors to the peripheral edges of the rookery and native grasses would be planted underneath the trees on an area approximately 16,500 square feet.

7. **Kayak Launch from Deck.** The expanded boardwalk (element number 8) would include a kayak launch that would likely be partially submerged at high tide.
8. **Expanded Boardwalk and Deck.** A raised wooden deck would replace existing structures along the shoreline on the north side of the parcel and would be expanded to include 2,725 square feet of water access, pending additional submerged aquatic vegetation surveys and consultations.
9. **Large Picnic Pavilion with Interpretation (using architectural vernacular of original Destin Homestead).** An open air picnic pavilion (900 square feet) with four picnic tables and interpretive signs would be constructed on the north side of the site using architectural vernacular of the original Destin Homestead (wood construction). The structures would consist of basic wood frames to provide shade with concrete slabs beneath.
10. **Boardwalk between Heron Rookery Trees with Interpretive Signage.** A wood boardwalk 144 feet long and six feet wide would be constructed through the heron rookery area, but would avoid the tree canopy areas. Construction would not occur during nesting season. Educational signage would be installed at the site. Recognizing the importance of the existing rookery and in consultation with the Florida Chapter of the National Audubon Society, the Trustees would preserve the current heron rookery by building a protection zone around the mature live oaks. Further, the Florida Trustees are exploring and may nominate the site for inclusion on the Great Florida Birding and Wildlife Trail.
11. **Restrooms with Outdoor Showers.** The site would provide an ADA accessible restroom (750 square feet) with outdoor showers connected to the municipal sewer and water.
12. **Splash Pad.** The splash pad would be approximately 60 feet by 80 feet in size. Underneath the rubberized splash pad surface a pool filtration (or similar) system would treat water from the public water supply. Used water would be re-captured, creating a closed loop system where additional water is input on an as-needed basis. Concrete would surround the edges of the splash pad. An informational sign describing would also be constructed at the splash pad (based on input from the local government).
13. **Expanded Fruit Tree Grove.** The proposed project would also protect and expand an existing small fruit tree grove in the center of the property by planting four fruit trees and protecting and fencing approximately five existing trees.
14. **Interpretation (Full-size Historical Seine Boat for Interaction).** The site would have a full size re-creation of a wood seine boat for historical interpretation. The boat would be set in the ground and cover an area approximately 30 feet by 10 feet.
15. **Covered Interpretation and Signage.** An informational kiosk structure (a wood structure of less than 100 square feet) would accompany and explain the historical and cultural value of the seine boat to the City of Destin.
16. **Welcome Sign and Public Art.** The project would include a welcome area with public art and concrete pavers at the drop off area and park entry plaza covering 2,025 square feet.
17. **Playground.** Play features would include a natural playground approximately 12 feet by 20 feet in size with safety surfacing and edging. An informational sign would also be placed at the playground (based on input from the local government).
18. **Parking for Approximately 30 Cars.** The proposed site plan includes a gravel parking lot for approximately 30 vehicles at the rear (eastern) side of the site (approximately 18,000 square feet). The parking area would include two ADA accessible parking spaces, which would be on concrete slabs with stabilized subgrade.
19. **Emergency Vehicle Access.** Adjacent to the parking lot would be an emergency access turn-around loop (concrete).

20. **Stormwater Treatment Pond (as-needed).** Stormwater pond and landscape drainage would be implemented pending engineering designs and calculations of stormwater runoff.
21. **Pedestrian Access from Calhoun Avenue.** The proposed project includes constructing a walkway from the site parking lot to the public sidewalk at the east edge of the property.

Additional site elements not explicitly labeled in the conceptual master plan include:

- **Concrete sidewalks.** The proposed project would construct ADA accessible concrete sidewalks between picnic area and viewing area elements in the central property areas (five feet wide and four inches deep covering an area approximately 6,500 square feet).
- **General site furnishings.** Additional site elements would include seven trash receptacles, ten benches, split rail cedar fencing (four feet high and 255 feet long), and historical-style homestead fencing (205 feet long and three feet high).
- **Signs.** In addition to educational signage discussed above for playground, seine boat, and heron rookery, signage would include signage at the main vehicular drive and main pedestrian entrance.
- **Lighting.** Site lighting would include nine pole lights at parking areas and one accent lighting at the signage wall (low voltage). All lighting would be low-glare, wildlife friendly, and comply with the guidance provided in the current edition of the FWC's Wildlife Lighting Criteria.
- **Landscaping.** General landscape development would also include hardwood tree maintenance, native plantings, an irrigation system near the park entry and park core only to maintain lawn areas, and landscape drainage.
- **Additional site work.** Site work would entail removal of any currently existing site structures and the two currently existing concrete slabs (boardwalk area) located on the southwestern portion of the site. Additional site work includes modifying existing electric service, connecting to the municipal sewer system, fire hydrant assembly and accompanying water main work, site grading (as-needed), and erosion control efforts during construction.

Final engineering and design plans for the proposed site improvements would be completed following further environmental resource surveys and consultations with state and federal agencies; proposed site improvements may be modified to avoid and/or minimize potential impacts to natural resources. Installation of the proposed site improvements is estimated to take 9-12 months. Staging of equipment and materials would likely be located on the property where parking lots would be constructed (according to the conceptual plan), or on previously disturbed areas of the site. Construction equipment would include a combination of hand-held or power tools for carpentry work as well as heavier construction equipment such as bulldozers, barges, trucks, backhoes, tractor trailers, cranes, small excavators, fork lifts, asphalt machine, roller, or generators. Construction would require the transport of materials to the project site. The number of trips required to transfer materials would be based on the amount and type of materials needed for site improvements. These details would be determined as part of the final construction design and plan.